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7 Attorney for MESA

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,)
11)
12 Plaintiff,)
13 V.)
14 GABRIEL MESA,)
15)
16 Defendant.)
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Case No.: 2:13-cr-00418-APG-VCF-1

MOTION FOR RECONSIDERATION OF ORDER OF DETENTION

COMES NOW, GABRIEL MESA by and through his counsel BRIAN J. SMITH, ESQ. respectfully moves this Honorable Court for the entry of an Order, granting his Motion for Reconsideration of his Order of Detention. The reasons for this motion are set forth in the following memorandum of points and authorities.

DATED this 28th day of September, 2015.

/s/ Brian J. Smith
BRIAN J. SMITH, ESQ.
Nevada Bar Number 11279
9525 Hillwood Drive, Suite 190
Las Vegas, Nevada 89134

MEMORANDUM OF POINTS AND AUTHORITIES

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1. On November 22, 2013, the Honorable George Foley, United States Magistrate Judge, ordered Defendant remanded to custody after a detention hearing in which he was represented by predecessor counsel, the Federal Public Defender. The Defendant respectfully requests an opportunity to present new information that tends to support the granting of release from detention in this case.

2. Title 18, United States Code, Section 3142(b) provides for pretrial release on personal recognizance or an unsecured bond. It states that:

The judicial officer shall order the pre-trial release of the person on his personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that a person not commit a federal, or local crime during his period of his release, unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

3. Title 18, United States Code, Section 3142(f) provides for a review of the detention hearing. It states that:

The hearing may be reopened before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of a person as required and the safety of any other person and the community.

4. In its Order on Detention, this Court concluded that Defendant was a serious flight risk as well as danger to the community. (Dkt. #11, p. 2). Concern centered on antiquated priors, involving convictions from 1993, 1994, and 2003. Additionally, the Defendant's prior history revealed two convictions of interest.

- 1 5. A large part of the reasoning for detention hinged on MESA's criminal history. Id.
2 Importantly, MESA has not engaged in violent behavior in over two decades.
3 MESA has completed classes to address violence at the Nevada Southern
4 Detention Center and a certificate of completion is attached as Exhibit #1. The
5 Order of Detention also gave focus to MESA's prior use of drugs and alcohol.
6 MESA has addressed these issues and has participated in classes that have
7 helped him overcome his substance issues. The completion of Narcotics
8 Anonymous and Alcoholics Anonymous classes are attached as Exhibits #2 and
9 #3 respectively.
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- 12 6. MESA has been in custody since November of 2013. If released from custody,
13 MESA would reside with his five children and their mother at his home within Clark
14 County. MESA was not only born and raised in Las Vegas but has also been part
15 of the community continuously for a period spanning more than 40 years. For
16 example, MESA has participated as a little league baseball coach (see Exhibit #4).
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- 19 7. Eleven months passed between the alleged final undercover buy, reported by
20 police on December 19, 2012, and the time of indictment. During this time MESA
21 lived and worked around Las Vegas, remaining embedded in the community and
22 refraining from the type of dangerous behavior that warrants detention.
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1 WHEREFORE, the Defendant MESA prays that this Honorable Court grant his
2 Motion to Reconsider Detention in this case and order an appropriate bond so as to
3 secure his release from custody as he has close family ties, a residence in Las Vegas,
4 and was afforded such freedom for nearly an entire year proceeding the indictment
5 despite the Government's knowledge of all the facts therein.
6

7 DATED this 28th day of September 2015.
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10 /s/ Brian J. Smith

11 BRIAN J. SMITH, ESQ.
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13 9525 Hillwood Drive, Suite 190
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EXHIBIT 1

Certificate of Achievement

Presented to

Gabriel Mesa

on this Day,

June 23, 2015

For the Completion of

Understanding and Reducing Angry Feelings

K. McCulloch

Case Manager K. McCulloch

[Signature]

Unit Manager Tittsworth

38059048

Detainee Register Number



CORRECTIONS CORPORATION OF AMERICA

Nevada Southern
Detention Center

EXHIBIT 2

Certificate of Achievement

Presented to

Gabriel Mesa

on this Day,

May 28, 2015

For Consistent and Active Participation for a quarter
in the following program:

Narcotics Anonymous (NA)

M. Harper

Chaplain M. Harper

[Signature]

Unit Manager B. Tittsworth

38059048

Detainee Register Number



**Nevada Southern
Detention Center**

EXHIBIT 3

Certificate of Achievement

Presented to

Gabriel Mesa

on this Day,

June 3, 2015

For Consistent and Active Participation for a quarter
in the following program:

Alcoholics Anonymous (AA)

M. Harper

Chaplain M. Harper

[Signature]

Unit Manager Titsworth

38059048

Detainee Register Number



**Nevada Southern
Detention Center**

EXHIBIT 4

~~Case 2:13-cr-00418-APG-VCF Document 18-1 Filed 08/25/14 Page 2 of 2~~

MARIOS NORTHTOWN INC.
1960 N. MARTIN LUTHER BLVD
LAS VEGAS, NEVADA 89106
PH.702-648-1482 FAX 702-648-1209

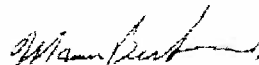
RE: Gabriel Mesa

Mario Berlanga the owner of Mario's Westside Market we have been at this location for 18 years. We sponsor various youth groups, we have 3 baseball teams which is through Community little league Baseball.

Gabriel Mesa has assisted us in coaching our rookie team I have known him to be a positive role model in coaching. He is a family man, I have never seen him to be out of character with the kids. He will have a job awaiting if he is released. In life we all make bad choices, but everyone deserves a second chance.

If you have any questions please feel free to call 702-375-1775

Sincerely,


Mario Berlanga Jr.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Law Office of Brian J. Smith, Ltd., and is a person of such age and discretion as to be competent to serve papers. That on September 28, 2015, she served an electronic copy of the above and foregoing **MOTION FOR RECONSIDERATION OF ORDER OF DETENTION**, by electronic service (ECF) to the persons named below and via United States Postal Service, first class mail, to the defendant:

DANIEL G. BOGDEN
United States Attorney
District of Nevada
CHRISTINA SILVA
333 Las Vegas Blvd. South
Suite 5000
Las Vegas, Nevada 89101
cristina.silva@usdoj.gov

GABRIEL MESA
ID# 38059048
Nevada Southern Detention Center
2190 E. Mesquite
Pahrump, NV 89060

/s/ Mary Jo Fata
Employee of the
Law Office of Brian J. Smith, Ltd.